

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 04-10385-MEL
)	
JEROME WEEKS,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE MORRIS E. LASKER
SENIOR UNITED STATES DISTRICT JUDGE

DISPOSITION

John J. Moakley United States Courthouse
Courtroom No. 8
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, July 11, 2007
11 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY
3 By: Christopher F. Bator, Assistant U.S. Attorney
4 John Joseph Moakley Federal Courthouse
5 One Courthouse Way
6 Boston, Massachusetts 02210
7 On Behalf of the Government

8 LAW OFFICE OF J. THOMAS KERNER
9 By: J. Thomas Kerner, Esq.
10 343 Commercial Street - Unit 104
11 Boston, Massachusetts 02109
12 On Behalf of the Defendant

13 In Attendance: Jesse Gomes, U.S. Probation Office
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1 P R O C E E D I N G S

2 (The following proceedings were held in Judge
3 Lasker's chambers:)

4 THE COURT: I received, as I guess everybody
5 knows -- except I didn't know it myself until this
6 morning -- a motion from the defendant for release
7 pending appeal based on the question of whether a
8 conversation with an individual named Kevin Brown should
9 have been admitted or not --

10 Am I correct?

11 MR. KERNER: Yes.

12 THE COURT: -- as part of the evidence which
13 would, if admitted, allegedly have been favorable to the
14 defendant.

15 You haven't had an opportunity to answer this
16 yet, have you?

17 I'm addressing the United States Attorney.

18 MR. BATOR: No, your Honor. I've only -- I
19 think I saw it for the first time yesterday.

20 THE COURT: I saw it for the first time this
21 morning, which is very troublesome.

22 MR. KERNER: I would not necessarily be seeking
23 a hearing on that motion today. I just wanted it to be
24 filed, and then at an appropriate time in the future,
25 after the government has a chance to respond, have a

1 hearing.

2 THE COURT: All right. In other words, we'll
3 proceed with sentencing today?

4 MR. KERNER: Yes.

5 THE COURT: But you would ask to preserve the
6 right to have me review the situation of whether he
7 should be released from custody pending appeal after the
8 government has answered the motion?

9 MR. KERNER: Yes. Yes.

10 MR. BATOR: Preliminarily, I guess it troubles
11 me, is the right word, too, to receive these motions so
12 close to the event. My first reaction, your Honor, is
13 that the motion should be stricken because it's based
14 entirely on, essentially, assertions --

15 THE COURT: Yeah. Well --

16 MR. BATOR: -- of counsel.

17 THE COURT: -- I don't need you to answer at the
18 moment.

19 MR. BATOR: But one relevant consideration is
20 that I also received at the same time notice of appeal.
21 And I think this -- which is -- I just saw Mr. Kerner
22 this morning, and I haven't had a chance --

23 THE COURT: I think a notice of appeal is
24 premature.

25 MR. BATOR: I think it's premature, too,

1 although I assume after the Court imposes sentence,
2 assuming we go forward today, I anticipate he'll file a
3 motion for appeal. But at that point isn't the Court
4 absent jurisdiction with regard to all these matters? I
5 think one of the issues with regard to this motion is
6 that it's -- it may be properly the subject matter of an
7 appellate argument.

8 THE COURT: Well, I'm not asking you to take a
9 position on those questions at the moment. I'm
10 satisfied defense counsel states to me that he does not
11 intend to ask for relief with regard to this motion
12 today.

13 MR. KERNER: No; I just wanted it filed.

14 THE COURT: I'm ready to proceed to sentencing.

15 MR. KERNER: Thank you.

16 (Proceedings in chambers concludes. There is a
17 recess in the proceedings at 11:18 a.m.)

18 (In open court:)

19 THE CLERK: All rise.

20 Hear ye, hear ye, hear ye, all those having
21 business before the United States District Court for the
22 District of Massachusetts draw near, give your
23 attention, you shall be heard. Court is now in session.

24 THE COURT: Good morning, everyone.

25 COUNSEL IN UNISON: Good morning, your Honor.

1 THE CLERK: This is Criminal 04-10385, United
2 States of America versus Jerome Weeks.

3 Will the attorneys please identify themselves,
4 and who they represent, for the Court.

5 MR. BATOR: Good afternoon, your Honor.
6 Christopher Bator for the United States.

7 THE COURT: Good afternoon, Mr. Bator.

8 MR. KERNER: Tom Kerner for Mr. Weeks, your
9 Honor.

10 THE COURT: Good morning, Mr. Kerner.

11 Before I call on Mr. Kerner, who represents Mr.
12 Weeks, and before I call on Mr. Weeks, I'll give the
13 government an opportunity to express any views they have
14 with regard to the sentencing, if you wish to do so.

15 MR. BATOR: I do, your Honor. Would the
16 government like to hear what the government's -- would
17 the Court like to hear what the government's
18 recommendation and what the basis for it is at this time
19 or did you want to go through the guideline provisions
20 first?

21 THE COURT: I'm sorry?

22 MR. BATOR: Would the Court like to hear from
23 the government with regard to its recommendation and
24 basis for it at this time or did the Court --

25 THE COURT: Yes, I would.

1 MR. BATOR: Okay. Does the Court intend, if I
2 may ask, to go through the guidelines issues
3 subsequently?

4 THE COURT: I'm satisfied with the guidelines,
5 if correctly applied in this case, if you'd like to know
6 that. But I would like to hear what the government's
7 view is.

8 MR. BATOR: Again, forgive me for -- because
9 there are some objections, your Honor. I believe just
10 as a matter of record we'll have to --

11 THE COURT: State your position.

12 MR. BATOR: On behalf of the government? I'm
13 happy to, your Honor.

14 The government's recommendation is for guideline
15 sentence, a sentence at the low end of the guideline,
16 which the applicable guideline the government believes
17 is 235 months to 293 months. The government seeks a
18 sentence at the low end of that guideline, a 235-month
19 sentence of incarceration, five years of supervised
20 release, the \$100 mandatory special assessment.

21 With regard to the fine, the government is in a
22 bit of a quandary because the presentence report
23 indicates that the defendant has not submitted and has
24 not -- and has been unwilling to provide requested
25 financial information. So as the probation officer in

1 the presentence report has indicated, there's no
2 indication of inability to pay a fine.

3 The government believes it's seeking a very
4 significant sentence here and does not wish to be
5 heavy-handed, but in the absence of that information is
6 a little bit at a loss of what to request and believes
7 that some -- absent that information, which a defendant
8 is required to provide to the probation office,
9 particularly to indicate if there's an inability to pay
10 a fine -- that absent the provision of that information
11 some fine, given the seriousness of the charges here and
12 the complete record of the defendant, would be
13 appropriate.

14 But the government would defer to the Court with
15 regard to what is appropriate, but its position is:
16 Absent that information, some fine would be appropriate.

17 THE COURT: I hear you.

18 MR. BATOR: With regard to the basis for the
19 government's recommendation, the government recognizes
20 that it is asking for a very significant sentence here.
21 And particularly in view of the 15-year minimum
22 mandatory and the guideline range -- armed career
23 criminal guideline range here -- is somewhat above the
24 15-year minimum mandatory.

25 The guideline range is approximately 19 and a

1 half years to approximately 24 and a half years. And
2 the government is asking for the 235 months, the low end
3 of that guideline.

4 The government feels very strongly that a
5 guideline sentence is appropriate in this case.
6 Entirely appropriate. And the reason for that is what
7 is an established, extensive record of criminal behavior
8 involving significant violence and drug trafficking of
9 the defendant over a very long time.

10 The one thing that I should say honestly, your
11 Honor, that troubles the government to some extent is
12 that throughout the tone of the defendant's filings, the
13 defendant's own letter, there's a suggestion that, as
14 the defendant says in his letter, I'm not the bad guy,
15 the prosecutor -- he says the ADA -- the prosecutor
16 makes me out to be.

17 And the suggestion is the record isn't very
18 significant, it's minimal; if he qualifies as an armed
19 career criminal, it's only just barely. And that is
20 absolutely not the case. The defendant has, depending
21 on how you count, four or five armed career criminal
22 predicates. He's not barely qualifying, he's adequately
23 qualifying. He has a criminal history score of -- the
24 PSR indicates it's 19 points. I spoke with Mr. Gomes
25 having noticed -- this morning, having noticing

1 something last night. I think the accurate number is 21
2 points because he gets two additional points for
3 having -- under Sentencing Guideline 4A.1.1(d) for
4 having committed the instant crime while under
5 supervision of another sentence. And I'd refer the
6 Court to Paragraph 4 of the conviction, Paragraph 48.
7 If that's true, and I believe Mr. Gomes concurs with
8 that, for purposes of his arguments, he would have 21
9 points.

10 There's a First Circuit case, *Brown*, your Honor,
11 *United States v. Brown*, 899 F.2d 94, which holds that a
12 significant -- a criminal history score significantly
13 above the 13 points which qualifies you for Category VI
14 is, itself, a basis for an upward departure. *Brown* is
15 the case where the criminal -- the defendant had 20
16 points. And in the language in *Brown* the Court -- the
17 First Circuit says that is off the charts and qualifies
18 as an appropriate basis for an upward departure from the
19 guideline.

20 The government isn't seeking an upward departure
21 from the guideline; the government is seeking a low-end
22 guideline sentence. But I think that's more evidence
23 that his record is very significant. And I'd like to
24 spend a second detailing it because I think the record
25 should appropriately reflect that, and I want to make

1 sure I can draw the Court's attention to it.

2 Beginning at age 16 through the present there
3 are just continual, repeated convictions for assault and
4 battery, assault and battery with a dangerous weapon,
5 resisting arrest, distributing cocaine. The record is
6 persistent --

7 THE COURT: It's considerable.

8 MR. BATOR: -- and elaborate.

9 And it is entirely consistent with the crime of
10 conviction in this case, and it is, it seems to me,
11 entirely consistent with the behavior of the defendant
12 when he did not show up for sentencing having been
13 given, in the government's view, a considerable break to
14 be allowed to be out pending sentencing, facing such a
15 large sentence, that he absconded and --

16 THE COURT: Right.

17 MR. BATOR: -- was found with what the
18 government believes are the trappings and tools of a
19 dangerous criminal. He was found with two loaded
20 weapons -- two loaded 9-millimeter -- fully-loaded
21 9-millimeter weapons -- and five false identity papers
22 including a birth certificate, a social security card, a
23 credit card and a couple of others in another name
24 bearing some of the -- a Georgia driver's license
25 bearing his picture in another name. Those are the

1 tools of an armed career criminal, your Honor. And I
2 believe that is the picture that his record
3 appropriately presents.

4 I think the other thing I'd point on briefly is
5 I do believe that the defendant perjured himself during
6 his trial. I think that was the jury's determination.
7 The case essentially came down to a credibility contest
8 between the defendant and the police officers; in
9 particular, Officer Darrah.

10 And I think the defendant came in here and
11 told -- and lied to the Court and lied to the jury with
12 regard to this -- what the government believes was this
13 fairytale about the other car -- the Court will remember
14 from the trial -- with the man in the Red Sox shirt who
15 there had been an interaction -- previous interaction
16 with in the bar, driving not down this alleyway toward
17 the -- purportedly toward the defendant, Mr. Brown,
18 firing a gun and then either dropping or leaving a
19 loaded gun for the defendant to -- Mr. Brown to find.
20 And the defendant says that happened and of course he
21 didn't pick up the gun, Mr. Brown did, and he was
22 unaware of this.

23 The notion that they would be running -- it's
24 undisputed the defendants were running in the direction
25 of this car -- them running in the direction of someone

1 who was firing shots at them is, among other things,
2 part of what the government believed was a fairytale and
3 was bald-face lies in front of the Court and in front of
4 the jury, for which the government believes the
5 defendant deserves a two-point obstruction enhancement.
6 The enhancement already applies, as the PSR indicates,
7 as a result of the absconding at the time of sentencing.
8 But I think that is consistent with this picture of the
9 defendant.

10 I intended to go on longer but I think the Court
11 understands the government's position.

12 THE COURT: I think you've adequately covered
13 it.

14 MR. BATOR: Thank you, your Honor.

15 THE COURT: Thank you, sir.

16 Mr. Kerner?

17 MR. KERNER: Thank you, your Honor.

18 Your Honor, I filed a sentencing memorandum, and
19 in that memorandum I indicated that I believed that the
20 criminal history category was overstated by the
21 probation department, and that for the reasons stated in
22 my memorandum that he is -- he should be assessed 17
23 criminal history points, which still puts him into
24 Category VI.

25 I further stated that I believe that if you look

1 at the nature of his prior convictions, they were all
2 convictions which resulted in either a probationary
3 sentence or a relatively short time in a county house of
4 correction.

5 My argument was that a Level VI is the worst
6 category that you can be put into under the guidelines,
7 and I suggested that even though Mr. Weeks does have a
8 fairly substantial prior criminal history, that it is
9 far from being the worst that comes through these
10 courthouse doors.

11 The main argument, your Honor, is really whether
12 or not the assault and battery in Somerville, and
13 possibly the resisting arrest in Brockton, are violent
14 felonies for purposes of the ACC. And they aren't for
15 two reasons: One, they are state misdemeanors,
16 punishable by two years or less, so they are excluded
17 under the statute; and, two, they are -- there is
18 nothing in the -- there's nothing before the Court
19 admissible under *Shepard* which would indicate that
20 either resisting arrest or the assault and battery were
21 violent felonies; they were just generic assault and
22 battery, generic resisting arrest.

23 And there are two ways in which both of those
24 crimes can be committed; both of those crimes can be
25 committed without violence. And there's nothing to

1 indicate -- there's nothing before this Court that is
2 admissible under *Shepard* to show that it was committed
3 in a way that was violent.

4 The police reports are not admissible; there are
5 no plea colloquies; there is -- I've been provided with
6 no charging documents which indicate that there was
7 violence associated with either one of these crimes. So
8 you cannot consider them violent felonies, I would
9 suggest, based on *Shepard*, and pursuant to the statute
10 they are not violent felonies and they cannot be ACC
11 predicates. Even if there is something in there which
12 indicates there was some threat of force or force used,
13 they are still state misdemeanors punishable by two
14 years or less; and, thus, they are excluded from the ACC
15 pursuant to the statute.

16 My argument, your Honor, is that you should
17 consider the guidelines at Offense Level 24, and
18 criminal -- the guideline should be criminal Category
19 VI, Offense Level 24. And my suggestion is that given
20 that even though there are sufficient points to place
21 Mr. Weeks into Category VI, because of the nature of
22 most of those convictions -- I would suggest that only
23 the two drug charges are felonies -- that it would be
24 appropriate to depart from the guidelines by one
25 criminal history category to Criminal History Category

1 V, and that would put him into a situation where the
2 guideline range is 92 to 115 months.

3 Now, Judge, this was a conviction which Mr.
4 Weeks is appealing. This is a conviction that was
5 returned by a jury -- an all-white jury that was chosen
6 under a system that has now been revamped by this court.
7 It was objected to at the time of the impaneling; I
8 objected to the fact that the whole panel consisted of
9 no African-Americans and I asked for a new panel, and
10 that was denied.

11 Since that time this court, the district court,
12 has revamped its procedures for calling people for jury
13 duty to get a more representative racial mix of the jury
14 panels.

15 THE COURT: Right.

16 MR. KERNER: And so if it was not a fair -- he
17 was not convicted under a fair jury-picking system
18 because if it was fair, they would have kept it that
19 way. It wasn't fair then -- and it may be fair now, but
20 it wasn't fair then. And we objected to that. And he
21 was convicted by an all-white jury and he was convicted
22 by lying white police officers.

23 And we know that they were lying because we have
24 a transcript of one police officer from a motion to
25 suppress hearing before you where he sat right over

1 there, and the police officer, whose name is Healy, said
2 that Darrah, the main police officer, told Healy on the
3 night of the incident that Mr. Weeks jumped over the
4 short six-foot fence with the barbed wire. And then he
5 came into court and he lied. He lied to the jury, he
6 lied to you, he lied to everybody, and he said that
7 Darrah told him that he jumped over the eight-foot fence
8 into that little pen area where the gun and the phone
9 were found.

10 And he said that after he was spoken to by the
11 U.S. Attorney's Office. And his excuse was, "Oh, I was
12 confused." He was not confused because -- I have the
13 transcript right here.

14 THE COURT: We're not retrying the case.

15 MR. KERNER: I'm not retrying the case but I'm
16 pointing out to you that this was an issue that you have
17 to take into consideration.

18 THE COURT: Not with regard to sentencing. If
19 the defendant is not guilty, that's one thing; but if
20 he's guilty, then I have to decide what's an appropriate
21 sentence. And that doesn't depend on the issues that
22 you're now talking about. The other ones, it does.

23 MR. KERNER: Yes. Well, the government claims
24 that it's their opinion that Mr. Weeks lied during the
25 trial. Well, that's the government's opinion. We have

1 proof that the government lied.

2 THE COURT: I don't -- come on. Calm down. I
3 don't accept the government's, quote, opinion either.

4 MR. KERNER: Thank you, your Honor. I'll move
5 on. I appreciate that.

6 If this case were properly brought in the
7 Brockton District Court where it belonged, he would be
8 facing a one-year minimum mandatory for possession of a
9 gun -- if he was convicted -- possession of a gun
10 without a license. That's what the punishment is in the
11 state court.

12 THE COURT: Well, your complaint there is with
13 the executive or the Congress, not with me.

14 MR. KERNER: Yes. And this is my argument for a
15 departure, all right?

16 THE COURT: It's not a recognized argument for
17 departure.

18 MR. KERNER: It could be.

19 THE COURT: The fact that a penalty would be
20 less in the state system is not a recognized argument
21 for departure. And I'm a great departer, I'll tell you.

22 MR. KERNER: But if you take into consideration
23 the circumstances under which this case got here it may
24 be. Because what happened that night is Mr. Weeks and
25 Mr. Kelvin Brown were both charged with possessing that

1 gun.

2 Mr. Kelvin Brown's case -- it wasn't a situation
3 where the police didn't know what happened and then a
4 couple of hours later, or a couple of days later, even
5 weeks later, hashed things out, dismissed Kelvin Brown
6 and prosecuted Mr. Weeks. What happened is that they
7 figured out that they could get 15 years from Mr. Weeks
8 and not from Mr. Brown, and that's why the case was
9 brought here.

10 MR. BATOR: I'm going to object, your Honor.

11 THE COURT: It would be a perfectly good reason
12 for bringing it here. I have nothing to do with that,
13 and you know that.

14 MR. KERNER: I know that you have nothing to do
15 with it.

16 THE COURT: It is nothing that is appropriate
17 for me to consider.

18 MR. KERNER: Thank you, your Honor.

19 THE COURT: Would you please get to your
20 recommendation?

21 MR. KERNER: My recommendation is that since
22 this is a situation where if the case was brought in
23 state court, he was facing here, I'm asking for a
24 three-year sentence; I'm asking for 36 months, which is
25 a considerable sentence.

1 THE COURT: It's perfectly justifiable for you
2 to ask for anything you want to, but you know very well
3 that that's not going to fly with the Court of Appeals.

4 MR. KERNER: Then at the very least, your Honor,
5 I believe that you should determine that Mr. Weeks is
6 not an ACC, he does not qualify for the ACC, and that
7 his guidelines should be 24/VI, and that you would be --
8 it would be appropriate for you to depart one level on
9 the criminal history category, from VI to V. And under
10 24/V, the guidelines are 92 to 115 months. And I would
11 ask that you -- then if you are not going to depart
12 further, then 92 months.

13 THE COURT: Thank you very much.

14 MR. KERNER: Thank you.

15 MR. BATOR: Your Honor, may I be heard just for
16 the record?

17 THE COURT: No. Nothing further. I've heard
18 enough. I'm ready to proceed. Please be seated.

19 MR. BATOR: Your Honor, for the record above, I
20 need to responds to his ACC arguments if only to say the
21 government has previously filed a memorandum and that
22 its position with regard to his argument whether what
23 qualifies as an ACC predicate or not, and that
24 memorandum indicates it's been rejected by the First
25 Circuit.

1 I need to say that for the record for above,
2 your Honor, or we'll be back here.

3 THE COURT: I understand.

4 Mr. Weeks, do you want to stand?

5 (Defendant rises.)

6 THE COURT: Mr. Weeks, here we are all gathered
7 together because of your case. It's a pretty heavy
8 moment for you, it's a pretty heavy moment for me, too.
9 You can tell me anything you want before I go ahead and
10 impose a sentence. I have to impose a significant
11 sentence here, and you know it. And I'd like to hear
12 what you have to say before I do it.

13 THE DEFENDANT: All right. First I want to say
14 I'm sorry for not showing up for sentencing. The reason
15 why I didn't show up was because my father was sick and
16 I had to take care of my little sisters. And I was
17 having a little baby girl.

18 I'm 27 years old with two beautiful little girls
19 that I want to see grow up. I'm older now and I know
20 right from wrong. I know if I had another chance, I
21 would stay out of trouble and do the right thing.

22 While I was on release I never did any drugs or
23 drink, I took things serious because I wanted to stay
24 out. The longest time I ever did in jail was 10 months;
25 I never did any longer time than that.

1 I'm asking the Court for mercy, to justify [sic]
2 a lenient sentence. Thank you.

3 THE COURT: Well, Mr. Weeks, I'm going to have
4 to go through a little arithmetic, for the record, to
5 explain why I'm imposing the sentence that I am imposing
6 and so on. There's been argument between counsel as to
7 how you calculate all this stuff. But let me just say
8 that I adopt the calculations made in the presentence
9 report by the probation department here, and find that
10 there is a base offense level of 24, with 2 added as an
11 adjustment for obstruction of justice and failure to
12 appear for sentencing, an adjusted offense level of 26.

13 And I conclude with regret, but nevertheless
14 firmly, that the defendant is subject to the armed
15 career criminal provision described at 18 U.S.C. Section
16 924(e) and the guidelines accordingly; second, I
17 conclude that you have three prior convictions for a
18 violent felony or a serious drug offense or both,
19 committed on occasions different from one another; and
20 that the total offense level is then 33.

21 Against you, to get back to plain English now,
22 is the nature of what you did: Possessing a firearm
23 after having been convicted of a felony; together with a
24 considerable prior record commencing when you were only
25 16 including assault and battery; attempted larceny on a

1 person resulting in a jail sentence; assault and battery
2 at age 18 for which a sentence was imposed; a further
3 assault; knowingly receiving stolen property for which
4 you received a jail sentence in 1998; sale of cocaine at
5 the age of 19 where you were sentenced; possession of
6 cocaine, the one-year committed deemed served; and
7 battery and resisting arrest in Miami, Florida, in 2002.

8 Now, according to the calculations of the
9 probation department, which I believe to be correct, in
10 this case the guideline range is 235 to 293 months. The
11 statutory minimum is 15 years to life. This is one of
12 those rare cases in which the guideline minimum is well
13 above the statutory minimum and in which both such
14 sentences are substantial and long.

15 I conclude that to impose a sentence of not less
16 than 235 months, which is the guideline minimum, would
17 be excessive within the meaning of 18 United States Code
18 3553(a). Accordingly, I impose the following sentence:
19 Pursuant to the Sentencing Reform Act of 1984, and
20 having considered the sentencing statute enumerated at
21 18 U.S.C. Section 3553(a), it's the judgment of the
22 Court that the defendant, Jerome Weeks, is hereby
23 committed to the custody of the Bureau of Prisons, to be
24 imprisoned for a term of 180 months, which is the
25 statutory minimum.

1 The Court makes the judicial recommendation that
2 the defendant participate in anger management or
3 batterer's counseling, if available, at the designated
4 Bureau of Prisons' facility.

5 Upon release from imprisonment, the defendant
6 shall be placed on supervised release for a term of
7 three years. Within 72 hours of release from custody of
8 the Bureau of Prisons, you shall report in person to the
9 district in which you were released.

10 No fine is imposed based on the Court's finding
11 that there is no evidence of your ability to pay a fine
12 or that you are likely to become able to do so.

13 While on supervised release you shall comply
14 with the following conditions: You shall not commit
15 another offense; you shall refrain from any unlawful use
16 of a controlled substance and submit to one drug test
17 within 15 days of release from imprisonment, at least
18 two periodic tests thereafter, not to exceed 104 tests
19 per year; you shall submit to the collection of a DNA
20 sample; you shall comply with the standard conditions as
21 has been adopted by the Court which are described in the
22 guidelines, Section 5D1.3(c); and you're prohibited from
23 possessing a firearm or other dangerous weapon.

24 It is further and finally determined that you
25 shall pay to the United States a special assessment of

1 \$100, which shall be due.

2 Now, Mr. Weeks, I've gone down as far as it's
3 possible for me to go, and it's still a very tough
4 sentence, I realize. I don't write the laws; I'm
5 obligated to impose a sentence as the laws are imposed
6 on me. You will get time off each year for good
7 behavior, if you behave well, and that will reduce the
8 sentence by a number of years, although it's still going
9 to be long.

10 You will still, however, not be an old man when
11 you come out, and I hope and believe and wish that
12 things will turn around for you and for society and for
13 your friends and family who are here today, all of whose
14 letters I received and read and care about. But they
15 must know that I'm not just free to do anything I wish.

16 I want to tell you that you have the right to
17 appeal both your conviction and your sentence. You have
18 significant reasons to appeal your conviction because
19 you have a question of suppression of evidence and other
20 issues raised by your attorney.

21 I assume that counsel will arrange to file a
22 notice of appeal forthwith. Am I correct in that
23 regard?

24 MR. KERNER: Yes, your Honor.

25 THE COURT: Very good.

1 MR. GOMES: Your Honor, perhaps I missed it.
2 What term of supervised release did you wish to impose?

3 THE COURT: Excuse me. I thought I did.

4 MR. BATOR: I believe the Court indicated three
5 years.

6 THE CLERK: Three years.

7 MR. GOMES: Three years? All right.

8 THE COURT: Yes. A three-year term of
9 supervised release.

10 That concludes the proceedings for today, and
11 I --

12 MR. BATOR: Your Honor, I need to state -- to be
13 heard very briefly as a matter of form for the appellate
14 court. I need to state an objection to the sentence for
15 the basis that it's below the minimum mandatory.

16 I should also point out that pursuant to Federal
17 Criminal 32 and United States -- the Supreme Court of
18 the United States, *Burns* -- *United States v. Burns*, 501
19 U.S., 135,136, the Court is -- the parties are required
20 to give some notice of a sua sponte deviation from the
21 guidelines.

22 I assume this is -- the Court indicated this is
23 not a departure but a deviation under the 35 --

24 THE COURT: That's correct.

25 MR. BATOR: -- because -- it's part of what the

1 rule requires in order to give the parties full
2 opportunity to comment on the basis for the sentence.

3 THE COURT: What section are you referring to?

4 MR. BATOR: I'm sorry? Yes. Rule -- it's
5 Federal Criminal Rule 32(i)(1)(C) which --

6 THE COURT: Excuse me.

7 MR. BATOR: -- mandates that the district court
8 allow parties to comment on -- relating to appropriate
9 sentence, in the *Supreme Court v. Burns*, in providing a
10 guideline --

11 THE COURT: Just give me a chance to look, will
12 you? You're going too fast for me. 32(i)(1)(C)?

13 MR. BATOR: Yeah. 32(i)(1)(C).

14 THE COURT: It's some system.

15 MR. BATOR: The Court indicated -- I didn't
16 invent it myself, your Honor.

17 THE COURT: Are you referring to the phrase
18 which says "must allow the parties' attorneys to comment
19 on the probation officer's determinations and other
20 matters relating to an appropriate sentence"?

21 MR. BATOR: Yes. As it's been construed by the
22 Supreme Court in the *Burns* case, your Honor, which has
23 indicated that the parties -- gives the parties some
24 right to be notified that the Court is contemplating
25 what a sentence will be in order to give full comment.

1 THE COURT: I'm amazed that in my 39 years on
2 the bench, but in my 13 years here in Boston, this has
3 never been brought to my attention before. If you wish
4 to start from scratch today, go ahead and give me your
5 position.

6 MR. BATOR: Well, I think it's more to -- all
7 the Court is saying, and I should add that the office --
8 the assistant U.S. attorneys are routinely making this
9 objection so that when we come into court we have some
10 idea of what to argue -- with regard to what the Court
11 may be thinking. All the Court has said this morning is
12 that the guideline sentence, even at the low end, which
13 the government -- is excessive, and nothing more.

14 THE COURT: That is a word that was used in a
15 recent commutation of sentence also.

16 MR. BATOR: No. No. And I don't suggest that
17 there's anything inappropriate about that. But it's
18 very limited in citing -- for the government to have
19 some sense of why the sentence is excessive and then to
20 be able to respond in some sense, is what would fulfill
21 I think, what the requirements of the rule and *Burns*
22 say on --

23 THE COURT: I'd be glad to hear anything that
24 you wish to tell me as to why it is not excessive.

25 MR. BATOR: Well, I think the government has

1 made its arguments with regard to that, your Honor.

2 THE COURT: That's what I thought. I heard you
3 all. I don't know what more can be done.

4 MR. BATOR: Well, I think having some
5 understanding of why the Court --

6 THE COURT: You have the right to appeal, too.
7 Thank you, everyone.

8 MR. KERNER: Thank you, your Honor.

9 THE CLERK: All rise.

10 Court is now in recess.

11 (The proceedings adjourned at 11:54 a.m.)

12

13 C E R T I F I C A T E

14

15 I, Marcia G. Patrisso, RMR, CRR, Official
16 Reporter of the United States District Court, do hereby
17 certify that the foregoing transcript constitutes, to
18 the best of my skill and ability, a true and accurate
19 transcription of my stenotype notes taken in the matter
20 of Criminal Action No. 04-10385-MEL, United States v.
21 Jerome Weeks.

22

23 /s/ Marcia G. Patrisso
24 MARCIA G. PATRISSE, RMR, CRR
25 Official Court Reporter